

CASE STUDIES

Case 1

Fact Finding Review

Employer Information

UC Account Number: - -
Employer Name:
Employer Name:
*Issue (per employer):*45

Claimant Information

Claimant Name:
SSN (last 4 digits):
Benefit Year Begin: 3/21/2010
Issue (Per Claimant): 45
Issue Effective Date: 3/22/2010
Today's Date: 3/23/2010

Please review your response to the following questions regarding the above referenced Claimant and Issue. To modify response, click 'Update Answers'. Click 'Continue' to submit your response.

On what date were you fired? 03/21/2010

Who fired you? Give name and title.

On what date did the incident occur which caused you to be fired? 03/21/2010

What was the reason you were given for being fired? Other (Explain in Comments)

Were you aware of the company policy regarding residency? Yes

Did you commit the act for which you were fired? If yes, provide specific details in Comments. No

Did you receive any verbal warnings before you were fired? If yes, provide dates and reasons for warnings in Comments. No

Did you receive any written warnings before you were fired? If yes, provide dates and reasons for warnings in Comments. No

Comments

On 3/21/2010 as I was about to close the store for the night Mary came in and asked for my keys and stated that I was being let go. The only reason I was given was that "I was not the right fit for the store".

040210G0141031

April 02, 2010

MICHIGAN UIA OFFICE 8
P.O. BOX 169
GRAND RAPIDS MI 49501-0169

FAX: (517) 636-0427

Re:
SS:

Account:
Employer: .

Dear State Representative:

This is in response to form UC1575E WR, Monetary Determination - Base Period Only, dated March 23, 2010 with an effective date of March 21, 2010. In view of the following, we request relief of benefit charges and/or a determination on the claimant's eligibility.

First Day: 11/14/2003 Last Day: 10/06/2008

The claimant voluntarily quit due to dissatisfaction with the job. He resigned after performance appraisal.

Be advised, is a duly authorized agent empowered to act on behalf of the above employer. The determination, or any related correspondence, should be mailed to: -

For additional information, please contact our State Agency Response Center at (800)

Sincerely,

B.O. 008 STATE OF MICHIGAN UNEMPLOYMENT BUREAU
PO BOX 169 GRAND RAPIDS MI 495010169

NOTICE OF DETERMINATION OR REDETERMINATION

** REPRINT **

INVOLVED EMPLOYER :
#: 002190406 FOR CLAIM OF: CASE

FILED : 03/22/2010 BYB : 03/21/2010

YOU WERE DISCHARGED FROM INC. ON 3/21/2010. AVAILABLE
INFORMATION DOES NOT ESTABLISH THAT YOUR SEPARATION WAS FOR MISCONDUCT.

IS FOUND THAT YOU WERE NOT FIRED FOR A DELIBERATE DISREGARD OF YOUR EMPLOYER
INTEREST. YOU ARE NOT DISQUALIFIED FOR BENEFITS UNDER MES ACT, SEC.29(1)(B)

IF YOU DISAGREE WITH THIS DETERMINATION; REFER TO "PROTEST/APPEAL RIGHTS"
ON THE BACK OF THIS FORM.

CLAIMS-EXAMINER : ADJUD TASK FORCE A T
DATE NOTICE WAS MAILED OR PERSONALLY SERVED: 04/12/2010

0021904065027

041410F0162001

EMPLOYER PROTEST

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE AGENCY
UIA FAX: (517)636-0427

Account # _____ Employer Name _____ c _____

Claimant _____

SSN # _____

Benefit Year Beginning 03/21/2010


(Re)Determination Issued 04/12/2010

Employer is SEPARATING EMPLOYER

Last Day Worked 03/21/2010

Details on why the employer should not be chargeable or the claimant should be denied benefits.

The claimant was discharged for misconduct and insubordination.


April 14, 2010

B.O. 008

STATE OF MICHIGAN
PO BOX 169

UNEMPLOYMENT BUREAU
GRAND RAPIDS

MI 495010169

NOTICE OF DETERMINATION OR REDETERMINATION

** REPRINT **

INVOLVED EMPLOYER :
#: 00219040

FOR CLAIM OF:

CASE

FILED : 03/22/2010 BYB : 03/21/2010

INC. PROTESTED THE DETERMINATION ISSUED 4/12/10 ON 4/14/10. YOU
WERE DISCHARGED ON 3/21/10 FOR INSUBORDINATION. THE EMPLOYER HAS NOT
SUBMITTED SUFFICIENT INFORMATION TO ESTABLISH MISCONDUCT TO WARRANT A CHANGE
OF THE DETERMINATION.

IS FOUND THAT YOU WERE NOT FIRED FOR A DELIBERATE DISREGARD OF YOUR EMPLOYER
(B) INTEREST. YOU ARE NOT DISQUALIFIED FOR BENEFITS UNDER MES ACT, SEC.29(1)(B)
ACT.

IF YOU DISAGREE WITH THIS REDETERMINATION; REFER TO "PROTEST/APPEAL RIGHTS"
ON THE BACK OF THIS FORM.

CLAIMS-EXAMINER : ADJUD TASK FORCE A

T

DATE NOTICE WAS MAILED OR PERSONALLY SERVED:06/28/2010

52055025

UIA 1706
(Rev. 11-04)Authorized by
MCL 421.1, et seq.State of Michigan
Department of Labor & Economic Growth
UNEMPLOYMENT INSURANCE AGENCY
www.michigan.gov/uia**PROTEST OR APPEAL
OF A (RE)DETERMINATION**

See Reverse Side for Instructions.

PLEASE USE BLACK INK. DO NOT USE PENCIL.**STEP 1: Identify who you are and who the involved employer and unemployed worker are.**☐

I am the worker.

Print Your Name: _____

Social Security Number: _____

☒

I am the employer.

Print Your Company Name: _____

Account Number (if known): _____

Inc _____

STEP 2: Identify what you are protesting or appealing.☐

I am protesting/appealing a determination mailed _____

☒

I am protesting/appealing a redetermination mailed _____

06/28/2010

STEP 3: I am protesting a determination or appealing a redetermination because:

Write your statement here. If you need more space, attach paper.

The claimant's actions constituted misconduct.

STEP 4 IF APPLICABLE: I did not protest or appeal within 30 days of when the (re)determination was mailed because:**STEP 5: I certify that the information written on this form is true and correct to the best of my knowledge and belief.**

(Your Signature) _____

7/8/2010
(Date)

* 0 1 7 0 0 4 0 8 *

P.O. Box

09081010165024

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

DECISION

IN THE MATTER OF THE CLAIM OF:

EMPLOYER INVOLVED:

ADMINISTRATIVE LAW JUDGE:

S.S. NO.

APPEAL NO. B

JURISDICTION

On July 8, 2010, the Employer timely appealed a June 28, 2010 Unemployment Insurance Agency (Agency) Redetermination holding the Claimant not disqualified for benefits under the provisions of Section 29(1)(b) of the Michigan Employment Security Act (Act).

APPEARANCES

A hearing was held in at the State Office of Administrative Hearings and Rules located in Livonia, Michigan on September 2, 2010 at which time the following appeared:

Claimant
Claimant Advocate

Employer Witness, Partner
Employer Advocate

FINDINGS OF FACT

The Employer is Inc. and does business as

In September 2008, Claimant began working full-time for the Employer. As of his last day, the Claimant was the manager of the Michigan store.

March 21, 2010 was the last day Claimant worked for the Employer. On that day, the Claimant was personally discharged by Partner Ms.

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testified that she discharged the Claimant because things were not working out.

Ms. testified that she had previously had a discussion with Claimant about the sales records that the Claimant was keeping and although the Claimant did not yell at Ms. the Claimant raised his voice.

Claimant testified that he has had weekly conversations with Ms. about the store sales but that he never raised his voice or was rude towards her.

Ms. testified that the final event before the Claimant's discharge was his failure to notify a speaker for seminar that the seminar was cancelled. Ms. testified that the store's sales were slow under the Claimant and that he failed to promote the store and its seminars.

Claimant testified that he and Ms. discussed seminars as promotional events for his store and mutually agreed that the seminars were not working. The Claimant said on occasions where 20 customers signed up for seminars, only 5 would attend.

Regarding the seminar that Ms. testified the Claimant failed to cancel the speaker, Claimant testified that he and Ms. agreed the day before to cancel the seminar because the Claimant could not confirm that the customer's who signed up would attend. The Claimant testified that he cancelled the speaker on that same day.

Claimant agreed that his store's sales were declining.

ISSUE

Is Claimant disqualified from receiving unemployment benefits as a result of a discharge for misconduct connected with work pursuant to Section 29 (1)(b) of the Act?

APPLICABLE LAW

MCL 421.29 provides in part:

- (1) An individual is disqualified from receiving benefits if he or she:
* * *
- (b) Was suspended or discharged for misconduct connected with the individual's work or for intoxication while at work.

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"Misconduct" is not defined in the statute but Courts have defined the term. In *Carter v Michigan Employment Security Commission*, 364 Mich 538 (1961), the Supreme Court adopted the definition of misconduct in *Boynton Cab Company v Neubeck*, 296 NW 636, 640 (Wis 1941) which states as follows:

The term 'misconduct'... is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute. *Carter, supra*, at 541.

The employer has the burden of demonstrating misconduct by a preponderance of the evidence. *Fresta v Miller*, 7 Mich App 58, 63-64 (1967).

REASONING AND CONCLUSIONS OF LAW

Misconduct is conduct evincing a willful or wanton disregard of the Employer's interests.

Partner testified that she fired Claimant e because things were not working out. Nothing in the testimony established that the Claimant committed any act or exhibited any behavior that can be considered misconduct within the Act.

Slow or declining sales and failure to achieve the level of success from store promotions expected by the Employer ultimately are a failure to meet the Employer's standard of job performance.

Absent a showing of misconduct, such a failure is not disqualifying under the Act.

Therefore, I find that the Employer has failed to meet the burden of proof to establish misconduct.

ORDER

The Agency's June 28, 2010 Redetermination is affirmed.

The Claimant is not disqualified from receiving unemployment benefits as a result of a discharge for misconduct connected with work pursuant to Section 29 (1)(b) of the Act.


ADMINISTRATIVE LAW JUDGE

Mailed at Livonia, MI September 3, 2010

IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME

This order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge OR (2) files a written, signed, appeal to the Board of Review, OR (3) files a direct appeal to circuit court on or before

October 4, 2010

I hereby certify that I personally mailed envelopes, properly addressed to each of the parties at their respective addresses as listed on the face of this document. In each envelope a true copy of the Administrative Law Judge Decision or Order was enclosed.

K. Jones
Name

September 3, 2010
Date Mailed

(SEE ATTACHED SHEET)

09081010165021

CASE STUDIES

Case 2

Fact Finding Review

Employer Information

UC Account Number: 1

Employer Name:

Issue (per employer):42

Claimant Information

Claimant Name:

SSN (last 4 digits):

Benefit Year Begin: 1/3/2010

Issue (Per Claimant): 42

Issue Effective Date: 1/8/2010

Today's Date: 1/9/2010

Please review your response to the following questions regarding the above referenced Claimant and Issue. To modify response, click 'Update Answers'. Click 'Continue' to submit your response.

On what date were you fired? 01/05/2010

Who fired you? Give name and title. Rick

On what date did the incident occur which caused you to be fired? 11/16/2009

Did you receive any verbal warnings before you were fired? If yes, provide dates and reasons for warnings in comments. No

Did you receive any written warnings before you were fired? If yes, provide dates and reasons for warnings in Comments. Yes

Did you give your employer proper notification of your absense or tardiness? Yes

What was the reason for your last absence or tardiness? Personal Illness

Did you seek medical attention? If yes, provide specific details of injury or illness. Yes

Did your employer request a statement from the doctor regarding your illness? No

Did you provide your employer with this statement? If yes, submit a copy of your doctor's statement. This statement must be provided within 10 days. No

Comments 11/16 Mother is a diabetic and has suffered total sight loss, and had the flu unable to care for self I had the flu and lost my voice, and was previously told by employer that all persons should stay home if sick due to the dangers of spreading H1N1.



**REQUEST FOR INFORMATION RELATIVE TO POSSIBLE
INELIGIBILITY OR DISQUALIFICATION**

See "For Employers"
at bottom of reverse
side for non-
compliance penalty.

Office: 013

ADDRESSEE

Please use En-22 for mailing

Mail Date: 01/26/10

RETURN FORM TO:

Unemployment Insurance Agency
P.O. Box 169
Grand Rapids, MI 49501-0169
Fax Number: 1-517-636-0427

Inquiry Line: 1-866-500-0017

TTY Customers Use: 1-866-366-0004

Unemployed Worker's Name: _____

Employer Name:
Account Number:

SSN:
Benefit Year Beginning: 01/03/10

You are involved in a claim for unemployment benefits, either as the employer or as the unemployed worker. The Unemployment Insurance Agency (UIA) needs the information below in order to make a determination on eligibility or qualification for benefits.

Please answer **all** the questions below. If additional space is needed, enter your answers on the back of this form or attach additional sheet(s) if necessary. If a question does not apply or you choose not to answer it, enter "n/a" (not applicable). In completing this form, provide in complete and specific detail all information you believe would be helpful to us. **If a reply is not received by the UIA within 10 days of the Mail Date shown above, a (re)determination will be made on the basis of the available information.** Mail or fax your answers to the return location indicated on the top of this form. You should keep a copy of the completed form for your records.

Employer did not respond to 1713. Closed 040 with available information.

G0212 1/26/2010



DELEG is an equal opportunity employer/program.

012610H0107003

EN01_00ZB2MX8NJGEW31

Unemployed Worker's Name: \
SSN: 3
Benefit Year Beginning: 01/03/10

Employer Name:
Employer Account Number:

012610H0107004

UNEMPLOYED WORKER: You are required to respond to this form within 10 days from the Mail Date on the front of this form.

Most recent occupation: Full-Time ☐ Part-Time ☐ Work schedule

Your first day worked: Last day worked: Most recent wage: hourly | weekly |

Your name (please print): Phone:

Your signature: Date:

FOR EMPLOYERS: You are required to respond to this form within 10 days of the Mail Date on the front of this form whether you feel payment(s) on this claim should be allowed or denied. If you fail to respond timely, you will not receive credit for benefits paid prior to receipt of the information, even if the unemployed worker is later found ineligible or disqualified. Please provide the following additional information.

First day worked: Last day worked: Date removed from payroll:

Your Name and Title (please print):

Your Signature: Date:

Phone:

For UIA Use Only

Sent to Unemployed Worker: User ID

Date

Returned by Unemployed Worker: User ID

Date

13MGEJN8XM2BZ00_10N3

B.O. 013

PO BOX 169

GRAND RAPIDS

MI 495010169

NOTICE OF DETERMINATION OR REDETERMINATION

** REPRINT **

INVOLVED EMPLOYER :
#: 002128785

000

FOR CLAIM OF:

CASE

LLC

FILED : 01/08/2010 BYB : 01/03/2010

YOU WERE TERMINATED FROM LLC ON 1/04/10 FOR EXCESSIVE ATTENDANCE VIOLATIONS. DISCIPLINARY ACTION HAD BEEN INITIATED PRIOR TO YOUR TERMINATION. HOWEVER, YOUR LAST OFFENSE WAS DUE TO PERSONAL ILLNESS OVER WHICH YOU HAD NO CONTROL.

IT IS FOUND THAT YOU WERE NOT FIRED FOR A DELIBERATE DISREGARD OF YOUR EMPLOYER'S INTEREST. YOU ARE NOT DISQUALIFIED FOR BENEFITS UNDER MES ACT, SEC(1) (B).
ACT.

IF YOU DISAGREE WITH THIS DETERMINATION; REFER TO "PROTEST/APPEAL RIGHTS"
ON THE BACK OF THIS FORM.

CLAIMS-EXAMINER : ADJUD TASK FORCE A T
DATE NOTICE WAS MAILED OR PERSONALLY SERVED:01/27/2010

Fax

February 1, 2010

Unemployment Agency
Branch Office 13ATTN: Claims Supervisor
FAX: 517-636-0427Claimant: _____
SSN#: _____

The employer named below requests a Re-Determination of the Notice of Determination mailed 1-27-10.

**The claimant was discharged for continued attendance violations after prior warnings.
The claimant knew that further infractions could lead to termination.**

The employer believes the claimant should be disqualified from receiving benefits under Section 29 (1) B of the MESC Act.

If the claimant becomes disqualified and has already received benefits, please credit the employer's account back to the original week ending dates.

Employer: _____
Account #: _____
By _____

Please accept this notification to the Agency that _____ Inc. is the duly authorized representative of the above employer in regards to any matters pertaining to this claimant. A signed Power of Attorney is on file with the Commission.

020110G019302709161020082049

B.O. 013 STATE OF MICHIGAN UNEMPLOYMENT BUREAU
PO BOX 169 GRAND RAPIDS MI 495010169

NOTICE OF DETERMINATION OR REDETERMINATION

** REPRINT **

INVOLVED EMPLOYER : 000 FOR CLAIM OF: CASE
#: 002128785
LLC

FILED : 01/08/2010 BYB : 01/03/2010

ON 2-1-10, _____ LLC TIMELY PROTESTED THE DETERMINATION
ISSUED 1-27-10. YOU WERE TERMINATED ON 1-4-10 FOR EXCESSIVE ATTENDANCE VIO-
LATIONS. DISCIPLINARY ACTION HAD BEEN INITIATED PRIOR TO YOUR TERMINATION.
YOU LAST OFFENSE WAS DUE TO PERSONAL ILLNESS OVER WHICH YOU HAD NO CONTROL.
WHILE THE EMPLOYER DISAGREE WITH THE DETERMINATION, THEY HAVE FAILED TO SUB-
MIT DOCUMENTATION THAT WARRANTS A REVERSAL.

IT IS FOUND THAT YOU WERE NOT FIRED FOR A DELIBERATE DISREGARD OF YOUR EMPLOYER
(S) INTEREST. YOU ARE NOT DISQUALIFIED FOR BENEFITS UNDER MES ACT, SEC(1)(B).
ACT.

IF YOU DISAGREE WITH THIS REDETERMINATION; REFER TO "PROTEST/APPEAL RIGHTS"
ON THE BACK OF THIS FORM.

CLAIMS-EXAMINER : ADJUD TASK FORCE A T
DATE NOTICE WAS MAILED OR PERSONALLY SERVED: 03/15/2010

040910G0178040 09161020082047

April 9, 2010

Unemployment Agency
Branch Office #013
517-636-0427

Claimant: _____
SSN#: _____

The employer named below requests a Referee Hearing for the Redetermination mailed 3-15-10 for the following reasons:

The claimant was discharged for continued violation of the employer's attendance policy. The claimant had been previously warned and knew that further infractions could lead to termination.

The claimant should be disqualified from receiving benefits under Section 29 (1) B of the MESC Act.

Employer:
Account #: _____

By _____


Please accept this notification to the Commission that _____ (inc. is the duly authorized representative of the above employer in regards to any matters pertaining to this claimant. A signed power of attorney is on file with the Commission.

Rev 12/06

STATE OF MICHIGAN

Form 1850

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

DECISION

IN THE MATTER OF THE CLAIM OF: EMPLOYER INVOLVED:

ADMINISTRATIVE LAW JUDGE:

S.S. NO.

APPEAL NO.

JURISDICTION

On April 9, 2010, the Employer, [redacted] LLC, timely appealed a March 15, 2010 Unemployment Insurance Agency (Agency) Redetermination which held the Claimant, [redacted], not disqualified for benefits under the provisions of Section 29(1)(b) of the Michigan Employment Security Act (Act).

APPEARANCES

A telephone hearing was held in Detroit, Michigan on September 3, 2010 at which time the following appeared:

Claimant,
Claimant Advocate,
Employer witness, General Manager
Claimant Advocate,

FINDINGS OF FACT

Claimant, [redacted], began working for Employer, [redacted] LLC on November 29, 2007. He worked for more than one year with his employment ending on January 4, 2010. Claimant was paid minimum wage in addition to sales commission. Claimant was a Sales Representative with Employer.

Prior to August 2009, Claimant was a high performer with the Employer. In August 2009, Claimant's performance declined. Prior to December 14, 2009, Claimant did not punch in when arriving to work in accordance with company policy. Claimant arrived late

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091310G0130011

to work every day in from December 15, 2009 through January 2, 2010. Claimant was discharged on January 4, 2010.

ISSUE

Is the Claimant disqualified as a result of a discharge or suspension for misconduct pursuant to Section 29 (1)(b) of the Act?

APPLICABLE LAW

MCL 421.29 provides in part:

- (1) An individual is disqualified from receiving benefits if he or she:

- (b) Was suspended or discharged for misconduct connected with the individual's work or for intoxication while at work.

"Misconduct" is not defined in the statute but Courts have defined the term. In *Carter v Michigan Employment Security Commission*, 364 Mich 538 (1961), the Supreme Court adopted the definition of misconduct in *Boynnton Cab Company v Neubeck*, 296 NW 636, 640 (Wis 1941) which states as follows:

The term 'misconduct'... is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute. *Carter, supra*, at 541.

The Employer has the burden of demonstrating misconduct by a preponderance of the evidence. *Fresta v Miller*, 7 Mich App 58, 63-64 (1967).

REASONING AND CONCLUSIONS OF LAW

There were three issues leading to Claimant's termination. Employer indicated that Claimant had poor work performance; excessive absences/tardiness; and that Claimant failed to punch in as required by Employer.

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Regarding Claimant's poor work performance, employer testified that Claimant's work performance dramatically decreased beginning in September 2009. Claimant testified that he requested one month off to move his ill mother to Michigan. Claimant was granted two weeks instead of the one month requested. This request was made in September. Claimant testified that he did not work for two weeks October due to caring for his mother. Claimant also testified that he did not work every day in November as he was caring for his mother. Claimant became ill in December and did not work the entire month at this time. Claimant did not receive any warnings for absences in September through the middle of December. Mr. [redacted] testified that he did not have any conversations with Claimant regarding poor work performance prior to Claimant's termination.

Claimant has established that his statistics declined from September through the end of December as a result of caring for his sick mother. Claimant did take an excessive amount of time off during this period but there was no showing that time off was not approved by his supervisor.

Mr. [redacted] testified that Claimant failed to punch in as required by company policy. Contrastly, Claimant testified that there was never a requirement to punch in prior to December 2009. This seems to be corroborated as Claimant worked for the company for more than two years and did not receive any warnings regarding punching in until December 2009.

Employer testified that Claimant began punching in after receiving the email warning in December 2009. However, he was late every day. Claimant's workday began at 8:30 a.m. Claimant testified that he was told by his supervisor to arrive to work no later than 9:00 a.m. This was an accommodation as Claimant had to place his daughter on the bus everyday at 8:40 a.m. Between December 15, 2009 and January 2, 2010, Claimant arrived to work after 9:00 a.m. virtually every day. Claimant testified that he arrived late in December as a result of taking his mother to the doctor.

Mr. [redacted] testified that employees are required to notify supervisor of an expected absence if there is an opportunity. Multiple absences are grounds for termination. Likewise, employees are expected to contact their supervisor when arriving to work more than five minutes late. Claimant testified that he always informed his supervisor when he was going to arrive to work late. Claimant's supervisor was not present at the hearing and therefore did not contradict Claimant's testimony. Mr. [redacted] did not have personal knowledge as to whether Claimant's supervisor approved the late arrivals. There is nothing in the record that would suggest that Claimant's supervisor was not aware and did not approve Claimant's late arrivals to work during this two week period.

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On January 4, 2010, [redacted] took his mother to a scheduled eye doctor's appointment. Claimant discussed this appointment with his supervisor and was granted approval. It appears that the appointment was not expected to last the entire work day but did in fact last all day. Upon Claimant's return to work, he was discharged.

Based upon the foregoing formulation of the facts and relevant law, the Employer has not met its burden that Claimant was discharged as a result of misconduct connected with work pursuant to Section 29(1)(b) of the Act. Claimant is therefore not disqualified.

ORDER

The March 15, 2010 Agency Redetermination is affirmed.

Claimant [redacted] is not disqualified as a result of a discharge for misconduct connected with work pursuant to section 29(1)(b) of the Act.

Claimant [redacted] is not required to requalify by rework under Section 29(3).

Claimant [redacted] is entitled to benefits for each claimed week following the filing for benefits, if otherwise eligible and qualified.

/s/ _____

ADMINISTRATIVE LAW JUDGE

Mailed at Livonia, MI September 10, 2010

IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME

This order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge OR (2) files a written, signed, appeal to the Board of Review, OR (3) files a direct appeal to circuit court on or before

October 11, 2010

I hereby certify that I personally mailed envelopes, properly addressed to each of the parties at their respective addresses as listed on the face of this document. In each envelope a true copy of the Administrative Law Judge Decision or Order was enclosed.

K. Jones

Name

September 10, 2010

Date Mailed

STATE OF MICHIGAN
EMPLOYMENT SECURITY BOARD OF REVIEW

In the Matter of the Claim of

-----,
Claimant

Appeal Docket No.:
Social Security No.:

Employer

DECISION OF BOARD OF REVIEW

This case is before the Board of Review pursuant to the employer's October 4, 2010 appeal from a September 10, 2010 decision by an Administrative Law Judge (Referee). The Referee's decision affirmed a March 15, 2010 Unemployment Insurance Agency (Agency) redetermination and found the claimant not disqualified for benefits under the misconduct discharge provision of the Michigan Employment Security Act (Act), Section 29(1)(b). After reviewing the entire record in this matter, we find the Referee's decision must be reversed. Our reasons are as follows.

The employer asserted the claimant was discharged for poor performance and attendance violations. Assuming that the attendance violations rise to the level of being excessive, the burden then shifts to the claimant to provide a legitimate explanation for the violations. See *Veterans Thrift Stores, Inc., v Krause*, 146 Mich App 366 (1985); MES Board Digest 12.18.

The employer's witness, _____, testified the claimant was late on December 15, 16, 17, 18, 19, 21, 22, 23, 26, 29, 30, and 31, 2009 and January 2, 2010 (Tr., pp. 26-28). The claimant did not dispute that he was late on those dates; he testified "some" of the dates he was late due to taking his mother to doctor's appointments (Tr., p. 41). Asked which days those were, he stated, "I couldn't say offhand exactly" (Tr., p. 41). He indicated he told his supervisor every time he was going to be late due to his mother's doctor appointments and was told "no problem" by his supervisor (Tr., pp. 41-42).

Under *Veterans Thrift, supra*, we find the claimant's tardiness for 12 consecutive work days was excessive and rose to the level of misconduct. Thus, the burden shifted to the claimant to explain why he was late on those dates. The claimant was aware that his attendance violations were at issue, per the Agency's March 15, 2010 redetermination. At the hearing, he said some of his tardiness was due to taking his mother to doctor's appointments, but he could not specify any dates. He did not explain why he was late the other days. The claimant failed his burden of proof. It appears that he was going to work only when it was convenient for him to do so, regardless of the employer's interests. See *Law v Village of Union City*, unpublished opinion of the Branch County Circuit Court, issued September 19, 1980 (Docket No. 80-03-198 AE).

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Page 2

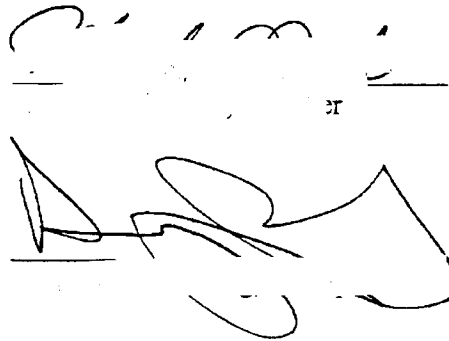
Based on the foregoing, we find the claimant's attendance violations were so excessive as to constitute misconduct, he did not provide a legitimate explanation for said violations, and therefore, he is disqualified for benefits.

It is our opinion that the Referee's decision should be reversed.

The Referee's decision is hereby reversed.

The claimant is disqualified for benefits under the misconduct discharge provision of the Act, Section 29(1)(b).

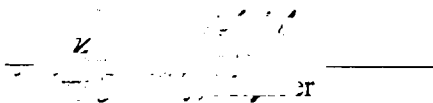
This matter is referred to the Agency for action consistent with this decision.



R. DISMISSING:

I respectfully disagree with the Board majority. In my opinion, the Referee's decision is in conformity with the facts as developed at the hearing, and I find the Referee properly applied the law to the facts.

It is my opinion that the Referee's decision should be affirmed. As the Board majority has chosen to do otherwise, I must respectfully dissent.



MAILED FROM LANSING, MICHIGAN

JUN 30 2011

This decision shall be final unless EITHER (1) the Board of Review RECEIVES a written request for rehearing on or before the deadline, OR (2) the appropriate circuit court RECEIVES an appeal on or before the deadline. The deadline is:

AUG 01 2011

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.

07011120052017

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

Appellant(s),

VS

SMARTWAY SYSTEMS, INC. v

Ion. S. _____

09/20/2011



, Inc.
Appellee(s).
_____ /

ORDER

At a session of said Court, held in the Coleman A. Young Municipal Center, Detroit, Wayne County, MI, on

JAN 27 2012

Present: HONORABLE S
CIRCUIT COURT JUDGE

This cause having come on for oral argument before the Court, and the Court having read the briefs and heard oral argument;

IT IS ORDERED that for reasons stated on the record, the decision below is:

- ☐ Affirmed
- ☒ Reversed
- ☐ Remanded for reasons stated on the record

IT IS FURTHER ORDERED that

The Court Retains Jurisdiction

☒ The Court does not Retain Jurisdiction

HONORABLE
CIRCUIT COURT JUDGE

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK

P. Smith
DEPUTY CLERK

AG (UIA)

CASE STUDIES

Case 3

Fact Finding Review

Employer Information

*UC Account Number:**Employer Name:**Employer Name:**Issue (per employer):*43

Claimant Information

*Claimant Name:**SSN (last 4 digits):**Benefit Year Begin:* 6/14/2009*Issue (Per Claimant):* 43*Issue Effective Date:* 6/15/2009*Today's Date:* 6/16/2009

Please review your response to the following questions regarding the above referenced Claimant and Issue. To modify response, click 'Update Answers'. Click 'Continue' to submit your response.

On what date were you fired?	06/05/2009
Who fired you? Give name and title.	
On what date did the incident occur which caused you to be fired?	06/05/2009
How did you allegedly violate company policy?	Other
Did you receive any verbal warnings before you were fired? If yes, provide dates and reasons for warnings.	No
Did you receive any written warnings before you were fired? If yes, provide dates and reasons for warnings.	No
Did you violate company policy? If yes, provide specific details.	No
Were you aware of the policy before the incident occurred which caused you to be fired?	No
Comments	discharged for unknown reason

Fact Finding Review

Employer Information

UC Account Number: 000000

Employer Name: 000000

Employer Name: 000000

Issue (per employer): 43

Claimant Information

Claimant Name: 000000

SSN (last 4 digits): 0000

Benefit Year Begin: 6/14/2009

Issue (Per Claimant): 43

Issue Effective Date: 6/15/2009

Today's Date: 7/2/2009

Please review your response to the following questions regarding the above referenced Claimant and Issue. To modify response, click 'Update Answers'. Click 'Continue' to submit your response.

On what date was the unemployed worker discharged?

06/05/2009

Who discharged the unemployed worker? Give name and title.

- DIRECTOR OF
MAINTENANCE

On what date did the incident which caused the discharge occur?

06/01/2009

How did the unemployed worker violate company policy?

Use of profanity

Was the unemployed worker given verbal disciplinary warnings prior to discharge? If yes, provide dates and reasons for each infraction.

Yes

Was the unemployed worker given written disciplinary warnings prior to discharge? If yes, provide dates and reasons for each infraction.

No

Was the claimant made aware of the policy before the incident occurred which caused the discharge?

Yes

Submit a copy of company policy/union contract terms related to the issue imposed by this case to the UIA fax line.

Comments

WARNING ON 10/08/2009 WITHOUT
SIGNATURES.

Employee Warning Notice

Employee Name: _____
Employee Number: 1233

Date of Warning: Oct 8, 2008
Department: _____

Type of Violation:

☐ Attendance ☐ Carelessness ☐ Insubordination
☐ Lateness or early quit ☐ Failure to follow instructions ☐ Violation of safety rules
☒ Rude to employees/customers ☐ working on personal matters ☐ unsatisfactory
work quality
☐ Violation of policy & procedures ☐ Willful damage to Aim property
Other _____

Previous Warnings:

	Oral	Written	Date	By Whom
1 st Warning	_____	_____	_____	_____
2 nd Warning	_____	_____	_____	_____
3 rd Warning	_____	_____	_____	_____

Employer Statement:

Date of Incident: Oct 7, 2008 Time: 09:30 am
In Attendance: _____

Statement: On the morning Oct. 7th when you punched into work I overheard you say something to our Rental Administrator "_____ that was NOT ACCEPTABLE. While (_____ was explaining details on our write up board to another mechanic, as you were punching in you said loud enough for all to hear, a statement referring to her as a "bitch" and then something about her still working here or can't wait until she doesn't work here any longer. This was over heard by _____ s, myself and another mechanic on shift. This is a direct violation of the "Employee Conduct & Work Rules" in our company Employee Handbook. ' _____ was very offended by your comment even if you may have meant it as a joke. You were warned on this date that if I hear you talk to this manner to another employee or customer without cause, you will be asked to punch out, leave the shop and not return until Human Resources advises if you will be terminated for your conduct.

Employee Statement:

Action to be Taken

☒ Warning ☐ Probation ☐ Suspension ☐ Dismissal
☐ Other

If other, please explain:

Consequence should incident occur again: You will be asked to punch out, leave the building and not return until your case reviewed by Human Resources. Time off with pay and possible termination.

I have read this Employee Warning Notice and understand it:

80008105609290
Jun. 26. 2009 4:46PM

Employees must show the jury duty summons to their supervisor as soon as possible so that the supervisor may make arrangements to accommodate their absence. Of course, employees are expected to report for work whenever the court schedule permits.

Either the Company or the employee may request an excuse from jury duty if, in the Company's judgement, the employee's absence would create serious operational difficulties.

The Company will continue to provide health insurance benefits until the end of the first full month of unpaid jury duty leave. At that time, employees will become responsible for the full costs of these benefits if they wish coverage to continue. When the employee returns from jury duty, benefits will again be provided by the Company according to the applicable plans.

Benefit accruals, such as vacations, sick leave or holiday benefits will be suspended during unpaid jury duty leave and will resume upon return to active employment.

695 WITNESS DUTY

The Company encourages employees to appear in court for witness duty when subpoenaed to do so.

If employees have been subpoenaed or otherwise requested to testify as witnesses by the Company, they will receive paid time off for the entire period of witness duty.

Employees will be granted unpaid time off to appear in court as a witness when requested by a party other than the Company. Employees are free to use any available paid leave benefit to receive compensation for the period of this absence.

The subpoena should be shown to the employee's supervisor immediately after it is received so that operating requirements can be adjusted, where necessary, to accommodate the employee's absence. The employee is expected to report for work whenever the court schedule permits.

700 EMPLOYEE CONDUCT AND WORK RULES

To ensure orderly operations and provide the best possible work environment, the Company expects employees to follow rules of conduct that will protect the interests and safety of all employees and the organization.

It is not possible to list all the forms of behavior that are considered unacceptable in the workplace. The following are examples of infractions of rules of conduct that may result in disciplinary action, up to and including termination of employment:

Theft or inappropriate removal or possession of Company property

Falsification of timekeeping records

Working under the influence of alcohol or illegal drugs

Possession, distribution, sale, transfer, or use of alcohol or illegal drugs in the workplace, while on duty, or while operating employer-owned vehicles or equipment

Fighting or threatening violence in the workplace

Boisterous or disruptive activity in the workplace

Negligence or improper conduct leading to damage of employer-owned or customer-owned property

Insubordination or other disrespectful conduct

Violation of safety or health rules

Smoking in prohibited areas

Any actions, words, or comments based on an individual's gender, sexual orientation, race, ethnicity, age, religion, disability or any other protected characteristics that substantially limits an employee's ability to perform the requirements of the position and/or creates a hostile work environment.

Possession of dangerous or unauthorized materials, such as explosives or firearms, in the workplace or company property or while on duty in any company vehicle

Excessive absenteeism or any absence without notice

Unauthorized absence from work station during the workday

Unauthorized use of telephones, mail system, or other employer-owned equipment

Unauthorized disclosure of business "secrets" or confidential information

Violation of personnel policies

Unsatisfactory performance or conduct

Employment with the Company is at the mutual consent of the Company and the employee, and either party may terminate that relationship at any time, with or without cause, and with or without advance notice

701 USE OF PHONE AND MAIL SYSTEMS

Personal use of telephones for long-distance and toll calls is not permitted.

Employees should practice discretion in using company telephones when making local personal calls and may be required to reimburse the employer for

10.0 MAINTAINING CONTACT WITH THE COMPANY AND MRO
AFTER A DRUG TEST

10.0 The Company's MRO is
whose telephone number is

10.1 An employee who refuses or fails to remain in contact with the Company and the Company's MRO will be considered insubordinate and subject to disciplinary action, up to and including discharge. In addition, an employee who fails to remain in contact may waive his/her right, under Section 3.1.2 of this Policy to speak with the company's MRO before a test is confirmed positive.

CONTACT LIST

Please refer to the Contact List in the Drug & Alcohol Policy on Page 46.

710 UNLAWFUL HARASSMENT & DISCRIMINATION

The Company is committed to providing a work environment that is free of discrimination and unlawful harassment. Actions, words, or comments based on an individual's gender, sexual orientation, race, ethnicity, age, religion, disability or any other legally protected characteristics that substantially limits an employee's ability to perform the requirements of the position and/or creates a hostile work environment will not be tolerated. As an example, sexual harassment (both overt and subtle) is a form of employee misconduct that is demeaning to another person, undermines the integrity of the employment relationship, and is strictly prohibited.

Any employee who wants to report an incident of sexual or other unlawful harassment should promptly report the matter to Human Resources. If the supervisor is unavailable or the employee believes it would be inappropriate to contact that person, the employee should immediately contact the President or any other member of management. Employees can raise concerns and make reports without fear of reprisal.

Any supervisor or manager who becomes aware of possible sexual or other unlawful harassment should promptly advise the President or Human Resources who will handle the matter in a timely and confidential manner.

Anyone engaging in sexual or other unlawful harassment will be subject to disciplinary action, up to and including termination of employment.

711 SEXUAL HARASSMENT

INTRODUCTION

Sexual harassment of employees occurring in the workplace or in other settings in which employees may find themselves in connection with their employment

is unlawful and will not be tolerated. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated. To achieve our goal of providing a workplace free from sexual harassment, the conduct that is described in this policy will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by employees. Because the Company takes allegations of sexual harassment seriously, we will respond promptly to complaints of sexual harassment and where it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment.

Definition of Sexual Harassment

Sexual Harassment is any unwelcome sexual advance or conduct on the job that creates an intimidating, hostile, humiliating or offensive working environment. It is not possible to list all circumstances that may constitute sexual harassment, the following are some examples of conduct which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances – whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life, comment on an individual's body, comment about an individual's sexual activity, deficiencies or prowess;
- Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one's sexual experiences; and,
- Discussion of one's sexual activities.

All employees should take special note that as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperative with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by the Company.

Complaints of Sexual Harassment

If any of our employees believes that he or she has been subjected to sexual harassment, the employee is obligated to file a complaint. All incidents of sexual

6000810909290
Jun. 26. 2009 4:47PM

(Rev. 02/09)

Department of Energy, Labor & Economic Growth
Unemployment Insurance Agency
www.michigan.gov/uiaBO 007 PO BOX 149
FAX NUMBER: 1-517-636-0427

GRAND RAPIDS MI 495010169

NOTICE OF DETERMINATION

INVOLVED EMPLOYER:

FOR CLAIM OF:

CASE #: 001921059

FILED: 06/15/2009

BYB: 06/14/2009

SEQ: 000

YOU WERE DISCHARGED FROM _____ ON 6/5/2009 FOR THE USE OF
PROFANITY WHICH IS A VIOLATION OF COMPANY POLICY. YOU HAD RECEIVED PRIOR
WARNINGS AND WERE AWARE OF THE POLICY. THE USE OF PROFANITY WAS NOT COMMON IN
THE WORKPLACE; THEREFORE MISCONDUCT IN CONNECTION WITH THE WORK HAS BEEN
ESTABLISHED.

IT IS FOUND THAT YOU WERE FIRED FOR A DELIBERATE DISREGARD OF YOUR EMPLOYERS
INTEREST, YOU ARE DISQUALIFIED FOR BENEFITS UNDER MES ACT, SEC. 29(1)(B).

YOU ARE DISQUALIFIED FOR WEEK ENDING 06/06/2009 UNTIL COMPLETION OF A
\$6,154.00 EARNINGS REWORK REQUIREMENT WHICH HAS NOT BEEN SATISFIED.

IF YOU DISAGREE WITH THIS (RE)DETERMINATION, REFER TO "RIGHT OF PROTEST OR APPEAL" ON THE REVERSE SIDE OF THIS FORM.

CLAIMS EXAMINER:

ADJUD TASK FORCE A

T

DATE NOTICE WAS MAILED OR PERSONALLY SERVED:

07/02/2009

1302

007

07/01/2009

07/01/2009

000324

070709G0124016

State Of Michigan**July 7,2009****Department of Energy, Labor ,and Economic Growth****Bo 007 PO Box 169****Fax:1-517-636-0427****Subject: Disqualified for benefits under MES Act,-SEC.29(1)(B)****RE: Letter of Protest For The Above:****Dear Madam or Sir,**

I protest your ruling in the matter for Claim of :
#001921059 Filed:06/15/2009 based on the following statements:

1 - Case

(1) I am the oldest tenured employee of 6 years. I started out as a maintenance man and was promoted to manager after one year. I served as manager for over three years until I had a new computer system installed and they hired a new manager to implement the new system. I was then made new mechanic lead-man (Head mechanic). I have a sterling record with no verbal or written reprimands in my personnel file.

(2) I was also the top salaried employee at the Facility therefore I suspect my termination was due more to economic factors than anything else.

(3) When I was notified of my discharge I was told it was due to other factors. Therefore I couldn't believe the response they gave you for my separation from the company. I have never been reprimanded in any way as I had stated above in number (1). Also, realistically, I worked in an environment where there were hundreds of truck drivers coming and going along with other mechanics and delivery drivers where the language is somewhat different than in an office environment. There were no signs posted about the use of profanity in the garage nor any written policy on the subject of the use of profanity. This is something that I believe they have dreamed up and I deny any allegation to the use of profanity as the other mechanics and drivers used this language routinely!

I swear that the statement above is true to the best of my knowledge and I am requesting that a redetermination be filed in my favor.

Sincerely,

070709G0124017

11030910031011

B.O. 007 STATE OF MICHIGAN UNEMPLOYMENT BUREAU
PO BOX 169 GRAND RAPIDS MI 495010169

NOTICE OF DETERMINATION OR REDETERMINATION

** REPRINT **

INVOLVED EMPLOYER : FOR CLAIM OF: CASE
#: 001921059

FILED : 06/15/2009 BYB : 06/14/2009

YOU TIMELY PROTESTED THE DETERMINATION ISSUED ON 07-02-09. WHICH HELD YOU
DISQUALIFIED FOR BENEFITS. YOU WERE DISCHARGED FROM . ; FOR USE OF
PROFANITY WHICH IS VIOLATION OF COMPANY POLICY. ALTHOUGH YOU DISAGREE WITH
THE PREVIOUS DECISION, THERE IS NO NEW OR ADDITIONAL INFORMATION TO WARRANT
REVERSAL. THEREFORE, THE PREVIOUS DETERMINATION IS HEREBY AFFIRM.

IT IS FOUND THAT YOU WERE FIRED FOR A DELIBERATE DISREGARD OF YOUR EMPLOYER(S)
INTEREST. YOU ARE DISQUALIFIED FOR BENEFITS UNDER MES ACT, SEC. 29(1)(B).

YOU ARE DISQUALIFIED FOR WEEK ENDING 06/06/2009 UNTIL COMPLETION OF A
\$6154.00 EARNINGS REWORK REQUIREMENT WHICH HAS NOT BEEN SATISFIED

IF YOU DISAGREE WITH THIS REDETERMINATION; REFER TO "PROTEST/APPEAL RIGHTS"
ON THE BACK OF THIS FORM.

CLAIMS-EXAMINER : ADJUD TASK FORCE A T
DATE NOTICE WAS MAILED OR PERSONALLY SERVED: 08/14/2009

08/18/09

To

State of Michigan, Fax #1-517-636-0427
Department of Energy, Labor & Economic Growth
Unemployment Insurance Agency
BO 007, P.O. Box 169, Grand Rapids, MI 49501-0169

Sub: Disqualified for benefits under MES-SEC. 29(1) B
Ref: Requesting Hearing Appeal Before Administrative Law Judge

Dear Madam or Sir,

I, _____, hereby request a hearing before a Administrative Law Judge for an appeal
on my disqualification of benefits on the claim of _____, Case
#001921059, original filing on 6/15/09.

I am requesting this hearing on the grounds that my appeal was denied on the basis that no new
evidence was provided on my behalf on my protest. Well, my employer never supplied any
evidence themselves on my discharge. My employee file or jacket does not contain any verbal or
written reprimands of any type. My employer discharged me on the grounds of using profanity
on company property. It never happened. Also there was no rules or signs, notices posted or any
aforementioned policies.

Thank you,

082009G0105030

11030910031009

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

DECISION

IN THE MATTER OF THE CLAIM OF:

EMPLOYER INVOLVED:

ADMINISTRATIVE LAW JUDGE: _____

S.S. NO. _____

APPEAL NO. _____

JURISDICTION

On August 20, 2009, the Claimant timely appealed an Unemployment Insurance Agency (Agency) Redetermination issued on August 14, 2009 which held the Claimant disqualified for benefits under the provisions of Section 29(1)(b) of the Michigan Employment Security Act (Act).

APPEARANCES

A hearing was scheduled at the State Office of Administrative Hearings and Rules located in Livonia, Michigan for October 22, 2009. Prior to the Hearing the employer was granted permission to appear by telephone.

The following individuals appeared in person:

Claimant
Attorney for Claimant
Witness for Employer (by telephone)
Representative for Employer (by telephone)

FINDINGS OF FACT

The Employer, Air _____ nv. is a full-service _____ g facility.
The Employer is also a _____

The Claimant, _____, was hired with the employer on January 28, 2003 as a maintenance mechanic. On the hire date, Mr. _____ received the Employer's Handbook containing a policy on behavior in the workplace.

11030910031004

On Mr. [REDACTED]'s last day of work, the position he held was Lead-Man Mechanic.

The Claimant's direct supervisor was [REDACTED] and the Director of Maintenance was [REDACTED].

On June 4, 2009, Mr. [REDACTED] was involved in an incident at the Employer's location. The Director of Maintenance was notified of the incident by email. An investigation was conducted.

On June 5, 2009, the Claimant's direct supervisor, [REDACTED], and the Director of Maintenance, [REDACTED], met with Mr. [REDACTED]. On this date, Mr. [REDACTED] was verbally terminated for being abusive and threatening to another employee in the June 4 incident.

ISSUE

Whether claimant is disqualified for the receipt of unemployment benefits as a result of a discharge for misconduct connected with work pursuant to Section 29 (1)(b) of the Act.

APPLICABLE LAW

MCL 421.29 provides in part:

- (1) An individual is disqualified from receiving benefits if he or she:

 - (b) Was suspended or discharged for misconduct connected with the individual's work or for intoxication while at work.

"Misconduct" is not defined in the statute but Courts have defined the term. In *Carter v Michigan Employment Security Commission*, 364 Mich 538 (1961), the Supreme Court adopted the definition of misconduct in *Boynton Cab Company v Neubeck*, 296 NW 636, 640 (Wis 1941) which states as follows:

The term 'misconduct'... is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are

not to be deemed 'misconduct' within the meaning of the statute.
Carter, supra, at 541.

The employer has the burden of demonstrating misconduct by a preponderance of the evidence. *Fresta v Miller*, 7 Mich App 58, 63-64 (1967).

REASONING AND CONCLUSIONS OF LAW

The Claimant acknowledged that he received the Employer's Handbook containing the Employer's policies on behaviors in the workplace at the time he was hired.

Mr. [redacted] denies that he violated these policies on June 4, 2009.

On June 4, 2009, Mr. [redacted] was involved in an incident with another employee. [redacted] conducted an investigation and determined that Mr. [redacted] threatened another worker and used profane language. The following day, Mr. [redacted] direct supervisor and the Director of Maintenance met with the Claimant and terminated him.

The Employer has the burden of proving misconduct. There were no witnesses at the Hearing who were involved in the June 4 incident.

Although the Claimant lacked veracity, there is no evidence that Mr. [redacted] violated the Employer's policy by threatening an employee or using profane language on the Employer's premises.

The employer has failed to meet the burden of proof.

ORDER

The Redetermination issued by the Agency on August 14, 2009 is reversed.

The claimant is not disqualified as a result of a discharge for misconduct in connection with his work pursuant to Section 29(1)(a) of the Act.

ADMINISTRATIVE LAW JUDGE

Mailed at Livonia, MI October 23, 2009

IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME

This order will become final unless an interested party takes ONE of the following actions: (1) files a written request for rehearing/reopening to the Administrative Law Judge OR (2) files a written appeal to the Board of Review, OR (3) files a direct appeal to circuit court on or before

November 23, 2009

I hereby certify that I personally mailed envelopes, properly addressed to each of the parties at their respective addresses as listed on the face of this document. In each envelope a true copy of the Administrative Law Judge Decision or Order was enclosed.

Name	October 23, 2009 Date Mailed
------	---------------------------------

(SEE ATTACHED SHEET)

11030910031006

110509F0664006

1500

November 3, 2009

State Office of Administrative Hearings and Rules
33523 Eight Mile Rd. Ste C-2
Livonia, MI 48152
Fax: (313) 456-4993

Re: S
Appeal No: b

To Whom It May Concern:

Let this letter serve as a written request for a rehearing/reopening of the hearing which was held on October 22, 2009 regarding the above claimant.

I may be contacted at [redacted] if you have any questions.

Sincerely,
^

Human Resources Assistant

11/4/09
dmsol

Rev 03-07

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

Form 1850

DECISION**IN THE MATTER OF THE CLAIM OF:****EMPLOYER INVOLVED:****ADMINISTRATIVE LAW JUDGE:****S.S. NO.****APPEAL NO. 1****ORDER DENYING APPLICATION FOR REHEARING**

On November 3, 2009, the Employer made an application for rehearing of a Decision mailed October 23, 2009 by the undersigned.

This matter began as an appeal filed by the Claimant from a Redetermination issued by the Unemployment Insurance Agency (Agency) on August 14, 2009. The Redetermination held the Claimant disqualified as a result of a discharge for misconduct under Section 29(1)(b) of the Michigan Employment Security Act (Act). A hearing was held in Livonia, Michigan on October 22, 2009.

The decision issued on October 23, 2009 reversed the Redetermination and held the Claimant is not disqualified under Section 29(1)(b) of the Act.

Section 33 of the Michigan Employment Security Act (Act) provides that, upon application of an interested party, an appeal may be reheard, affirmed, modified, set aside, or reversed on the basis of the evidence previously submitted in the case, or on the basis of additional evidence, provided that the application is filed within 30 days of the decision date. Upon a showing of good cause, a matter may be reopened or reviewed and a new decision issued after the 30 day appeal period has expired, provided that a request for review shall be made within one year after the date of mailing of the prior decision.

It is found that the parties had a full opportunity to present such witnesses and evidence which would further their positions at the original hearing. Due process required advice to the parties by the Notice of Hearing which also, on its reverse side, advised the parties of the opportunity to present witnesses and the importance of their attendance.

Upon review of the request for rehearing, and of the file, and of the applicable law on the issue, it is found that no new or additional information exists to be presented that was not available at the time of the original hearing.

110509F0664005

ORDER

The rehearing request received on November 3, 2009 is hereby denied.

Administrative Law Judge

Mailed at Livonia, MI November 5, 2009

IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME

This order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, appeal to the Board of Review, OR (2) files a direct appeal to circuit court on or before

December 7, 2009

I hereby certify that I personally mailed envelopes, properly addressed to each of the parties at their respective addresses as listed on the face of this document. In each envelope a true copy of the Administrative Law Judge Decision or Order was enclosed.

Name _____ November 5, 2009
Date Mailed

(SEE ATTACHED)